

Internal Revenue Service

memorandum

CC:TL-N-958-90

VWATERS

date: DEC 6 1989

to: District Counsel, [REDACTED]

Attn: [REDACTED]

from: Senior Technician Reviewer  
Tax Shelter Branch CC:TL:TS

subject: [REDACTED] - [REDACTED]

This memorandum is in response to your October 2, 1989, request for tax litigation advice regarding the above-mentioned subject.

ISSUES

1. Whether I.R.C. § 6229(d)(2) may be extended during the suspension period of section 6229(d)(2) or whether an overassessment should be made pending final determination of computational issues?

2. Whether the Service should make an assessment (i.e., overassessment) or whether the inclusion of the adjustment on the Revenue Agent Report ("RAR") is sufficient in light of the [REDACTED] period of limitations?

CONCLUSIONS

1. The Service should be able to extend the time for assessment at any time prior to the expiration of the one year suspension under section 6229(d)(2). However, we do not recommend extending the assessment period beyond the one year period provided in section 6229(d)(2) because there are litigation hazards.

2. The Service must refund the overassessment by [REDACTED], the date on which the period of limitations under section 6229(a) will expire. In addition, the Code provides that to the extent practicable, the refund should be made without the requirement that the partnership file a claim.

FACTS

[REDACTED] (a partnership) was examined as part of the coordinated examination of [REDACTED] and its subsidiary companies. [REDACTED], an [REDACTED] partner of [REDACTED], is a [REDACTED] owned subsidiary of [REDACTED] which is in turn a [REDACTED] owned subsidiary of [REDACTED]

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██████████ (formerly ██████████) and files as part of the ██████████ consolidated return group. For the tax year ended ██████████, ██████████ recognized partnership flow through losses of \$ ██████████. As a result of the partnership examination, ██████████ was determined to be entitled to a partnership loss of \$ ██████████, or an adjustment of an additional \$ ██████████.

Because of the complexities of linking the many Coordinated Examination Program cases and foreign partners, the examination of ██████████ was sent to the Examination Division in Dallas, Texas without being linked. A notice of final partnership administrative adjustment ("FPAA") was issued to the tax matters partner ("TMP") on ██████████.<sup>1</sup> The failure to respond by the TMP or a notice partner within 150 days began the running of the one year assessment statute on ██████████.

#### DISCUSSION

##### I. Statutory Extension During Suspension Period of Section 6229(d).

Section 6229(d) suspends the period of limitations under section 6229(a). That section provides that, upon the mailing of an FPAA to the TMP, the period of limitations provided for in subsection (a) shall be suspended: (1) for the period during which an action can be brought under section 6226, or if an action is brought during that period, until the decision of the Court is final; and (2) for one year thereafter. This means that the Service has one year to make computational adjustments upon expiration of the period for petitioning cases, or becoming final in the petitioned cases provided that the petition was timely.

Your question is whether consents obtained during the suspension period of section 6229(d) can validly extend the period of limitations for assessment under subsection (a). It is our position that the Service should be able to extend by agreement the time for assessment at any time prior to the expiration of the one year suspension period under section

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<sup>1</sup> It should be noted if that the partnership filed its return timely without an extension and did not extend the three year period of limitations of section 6229(a), the period of limitations for making an assessment would have expired on ██████████. As such, the FPAA would have been untimely. Accordingly, we presume that either the Service granted the partnership an extension of time for filing its return or the partnership extended the three year period of limitations for assessment pursuant to section 6229(b)(1).

expiration of the one year suspension period under section 6229(d)(2). The section 6229(a) period of limitations may be extended under section 6229(b) as long as the section 6229(a) period has not expired prior to the date of such extension. I.R.C. § 6229(b)(1). Since section 6229(d) suspends the running of the section 6229(a) period of limitations, by implication the section 6229(a) period of limitations is still open. Consequently, a section 6229(b) extension could be utilized to extend the section 6229(a) period of limitations during the suspension period. However, this issue has not been addressed by the court, so we do not recommend extending the assessment period beyond the one year period provided in section 6229(d)(2), unless absolutely necessary.

## II. Whether the Service Should Make an Assessment.

The Code provides that an overpayment should be refunded without requiring the partner to file a claim. Specifically, the Code provides:

In the case of any overpayment by a partner which is attributable to a partnership item (or an affected item) and which may be refunded under this subchapter, to the extent practicable credit or refund of such overpayment shall be allowed or made without any requirement that the partner file a claim therefor.

I.R.C. § 6230(d)(5). The Code also provides that "no credit or refund of an overpayment attributable to a partnership item (or an affected item) for a partnership taxable year shall be allowed or made to any partner after the expiration of the period of limitation prescribed in section 6229 with respect to such request." I.R.C. § 6230(d)(1). Because we do not recommend that the Service extend the section 6229(a) period of limitations during the extension period of section 6229(d), the Service must refund the overpayment by [REDACTED], the date on which the period of limitations will expire. Otherwise, section 6230(d)(1) will bar a later refund. Moreover, even if the Service does not refund the overassessment prior to [REDACTED], the partnership is authorized to file a claim for refund and bring a suit with respect to the refund of any overpayment which the Service failed to allow. I.R.C. §§ 6230(c)(1)(B) and 6230(c)(3).

If you have any additional questions regarding this matter,  
please contact Vada Waters at (FTS) 566-3289.

  
CURTIS G. WILSON